

FILED
DISTRICT COURT OF GUAM
JUL -7 2005
MARY L.M. MORAN
CLERK OF COURT

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**DISTRICT COURT OF GUAM
TERRITORY OF GUAM**

ALEXANDER BLANCO KITANO,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

Civil Case No. 05-00019

ORDER

Petitioner Alexander Blanco Kitano ("Kitano") filed a Petition under 28 U.S.C. § 2254 for Writ of *Habeas Corpus* by a Person in State Custody and a Motion to Proceed In Forma Pauperis. See, District Court File No. CV 04-00007, Docket No. 3. In an Order filed May 14, 2004, the Court found that Kitano had not exhausted all his state judicial remedies, and dismissed his petition. See, District Court File No. CV 04-00007, Docket No. 5. Kitano asserts that on November 29, 2004 he filed a petition for writ of *habeas corpus* in the Superior Court of Guam that is still pending.¹

Kitano now seeks a writ of *mandamus* from this Court to compel the Superior Court of Guam to expedite his petition citing to *Apusento Garden (Guam) Inc. v. Superior Court of Guam*, 94 F.3d 1346 (9th Cir.1996) to support this Court's jurisdiction to hear his petition.² See, District Court File No. CV 05-00019, Docket No. 1. However, *Apusento Gardens* addresses the jurisdiction that this Court exercised when it was the appellate court for the Superior Court of

¹ Kitano further represents that said petition (Guam Superior Court File No. SP 236-04) was subsequently amended on February 3, 2005.

² In addition to his petition, Kitano filed a motion to proceed *in forma pauperis*. See, District Court File No. CV 05-00019, Docket No. 3. Since the Court has no jurisdiction to hear this matter this motion is moot.

ORIGINAL

1 Guam under 48 U.S.C. § 1424-3.³ Because there is now a sitting Supreme Court of Guam this
2 Court no longer exercises appellate jurisdiction over acts of the Superior Court of Guam. *See*,
3 48 U.S.C. § 1424-1,⁴

4 This Court lacks jurisdiction to hear Kitano's petition as it is more properly brought
5 before the Supreme Court of Guam. Accordingly, Kitano's petition for writ of *mandamus* is
6 hereby DISMISSED.

7 IT IS SO ORDERED this 14 day of July, 2005.

8 Notice is hereby given that this document was
9 entered on the docket on JUL - 7 2005.
10 No separate notice of entry on the docket will
11 be issued by this Court.

12 Mary L. M. Moran
13 Clerk, District Court of Guam

14 By: [Signature] JUL - 7 2005
15 Deputy Clerk Date

16 [Signature]
17 Robert M. Takasugi
18 United States District Judge

19 ³ 48 U.S.C. § 1424-3(a) states in pertinent part:

20 Prior to the establishment of the appellate court authorized by section 1424-1(a) of this
21 title, which is known as the Supreme Court of Guam, the District Court of Guam shall
22 have such appellate jurisdiction over the local courts of Guam as the legislature may
23 determine . . .

24 ⁴ 48 U.S.C. § 1424-1(a) states in pertinent part:

25 The Supreme Court of Guam shall be the highest court of the judicial branch of Guam
26 (excluding the District Court of Guam) and shall

- 27 (1) have original jurisdiction over proceedings necessary to protect its
28 appellate jurisdiction and supervisory authority and such other original
jurisdiction as the laws of Guam may provide;
(2) have jurisdiction to hear appeals over any cause in Guam decided by the
Superior Court of Guam or other courts established under the laws of Guam;
(3) have jurisdiction to issue all orders and writs in aid of its appellate,
supervisory, and original jurisdiction, including those orders necessary for
the supervision of the judicial branch of Guam;
(4) have supervisory jurisdiction over the Superior Court of Guam and all
other courts of the judicial branch of Guam;
(5) hear and determine appeals by a panel of three of the justices of the
Supreme Court of Guam and a concurrence of two such justices shall be
necessary to a decision of the Supreme Court of Guam on the merits of an
appeal;
(6) make and promulgate rules governing the administration of the judiciary
and the practice and procedure in the courts of the judicial branch of Guam,
including procedures for the determination of an appeal en banc; and

* The Honorable Robert M. Takasugi, United States Senior District Judge for Central California, by designation